



DAN MORALES
ATTORNEY GENERAL

Office of the Attorney General
State of Texas

June 27, 1991

Ms. Laura Ray
Staff Attorney
Texas Water Commission
P.O. Box 13087, Capitol Stn.
Austin, Texas 78711-3087

OR91-313

Dear Ms. Ray:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 12559.

The Texas Water Commission (the commission) received an open records request for, *inter alia*, "memoranda . . . discussing or referring to policy or legal issues that have arisen or may arise" concerning ground water contamination at a specified location. You have submitted to this office for review one memorandum that you seek to withhold pursuant to sections 3(a)(3) and 3(a)(11) of the Open Records Act.

To secure the protection of section 3(a)(3), a governmental body must first demonstrate that a judicial or quasi-judicial proceeding is pending or reasonably anticipated. Open Records Decision No. 588 (1991) (copy enclosed). Further, the governmental body's attorney must show that the requested material relates to the litigation. *See* Open Records Decision No. 551 (1990). Based on your representation that the commission has commenced an enforcement proceeding against the company at the specified site for contamination of ground water, it is clear that the memorandum "relates" to that proceeding. Accordingly, you may at this time withhold the memorandum in its entirety pursuant to section 3(a)(3). *But see* V.T.C.S. art. 6252-17a, § 14(f) (Open Records Act does not create privileges from discovery).

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with

a published open records decision. If you have questions about this ruling, please refer to OR91-313.

Yours very truly,



Susan Garrison
Assistant Attorney General
Opinion Committee

SG/RWP/lb

Ref.: ID# 12559

Enclosures: Open Records Decision Nos. 588, 551

cc: Laura McLyman
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